



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAR 23 2010

Mr. James Bopp, Jr., Esq.
Mr. Barry A. Bostrom, Esq.
Bopp, Coleson & Bostrom
The National Building
One South Sixth Street
Terre Haute, Indiana 47807-3510

RE: MUR 6266
National Right to Life PAC

Dear Messrs. Bopp and Bostrom:

On August 7, 2009, the Federal Election Commission (the "Commission") notified your clients, the National Right to Life Political Action Committee and Carol Tobias, in her official capacity as treasurer, that in the normal course of carrying out its supervisory responsibilities it ascertained information suggesting that your clients violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and the matter was referred to the Office of the General Counsel for possible enforcement action. The Commission also provided your client with a copy of the referral.

After reviewing the referral and your clients' response, on March 17, 2010, the Commission found reason to believe that the National Right to Life Political Action Committee and Carol Tobias, in her official capacity as treasurer, violated 2 U.S.C. §§ 434(b) and 434(g), provisions of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that your clients have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless your clients notify the Commission in writing that you wish the investigation to be made public.

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We look forward to your response.

Sincerely,



Matthew S. Petersen
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Conciliation Agreement

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: National Right to Life Political Action Committee MUR 6266
and Carol Tobias, in her official
capacity as treasurer

I. GENERATION OF MATTER

This matter was initiated by the Federal Election Commission ("Commission") pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

II. FACTUAL AND LEGAL ANALYSIS

A. Introduction

The Reports Analysis Division ("RAD") referred National Right to Life Political Action Committee and Carol Tobias, in her official capacity as treasurer,¹ ("the Committee") to the Office of General Counsel for apparent violations occurring during the 2006 election cycle. As described below, these apparent violations include the Committee's failure to: file or timely file 24 and 48-Hour Notices of independent expenditures, file accurate Schedules D and E, continuously report outstanding debts, and other reporting errors relating to independent expenditures. The reporting inaccuracies identified during this period stem from two election-sensitive reports, the Committee's 2006 October Quarterly and 2006 12 Day Pre-General Reports, as well as the 2006 30 Day Post-General and 2006 Year-End Reports and subsequent amendments to these reports. In its response to the notice of referral, the Committee acknowledged the errors. Accordingly, the Commission has determined to find reason to believe

¹ According to available sources, Ms. Natividad served as treasurer from July 31, 1991 to September 3, 2008. Following her resignation, the Committee filed an amended Statement of Organization on September 4, 2008, naming Carol Tobias as treasurer.

1 that National Right to Life Political Action Committee and Carol Tobias, in her official capacity
2 as treasurer, violated 2 U.S.C. §§ 434(b) and 434(g).

3 **B. Failure to File or Timely File Notices of Independent Expenditures**
4

5 An independent expenditure is an expenditure for a communication that expressly
6 advocates the election or defeat of a clearly identified candidate, and is not coordinated with a
7 candidate, candidate's committee, party committee or their agents. 2 U.S.C. § 431(17). The Act
8 permits political committees such as the Committee to make unlimited independent expenditures,
9 but they are required to disclose those expenditures to the public through timely reports filed
10 with the Commission if, in aggregate, they exceed \$250. 2 U.S.C. § 434(c);

11 11 C.F.R. §§ 100.16, 104.4(g), 109.10; *Buckley v. Valeo*, 424 U.S. 1, 45 (1976). Such
12 expenditures, when added to other independent expenditures made to the same payee during the
13 same calendar year that exceed \$200, shall be reported on Schedule E. 11 C.F.R. §§ 104.3
14 (b)(3)(vii) and 104.4(a). Independent expenditures made (*i.e.*, publicly disseminated) prior to
15 payment should be disclosed on Schedule E and as a reportable debt on Schedule D with a
16 statement ("memo") explaining the circumstances and conditions under which each debt and
17 obligation was incurred or extinguished. 11 C.F.R. § 104.11.

18 The Commission must receive a political committee's reports of independent
19 expenditures within 24 or 48 hours, whichever is applicable, of the date that the independent
20 expenditure is publicly distributed or otherwise disseminated. 11 C.F.R. §§ 104.4(f) and
21 104.5(g)(2). Any independent expenditures aggregating \$1,000 or more, with respect to any
22 given election, and made after the 20th day but more than 24 hours before the day of an election
23 must be reported and the report must be received by the Commission within 24 hours after the
24 expenditure is made. 2 U.S.C. § 434(g)(1)(A). A 24-hour notice is required for each additional

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1 \$1,000 that aggregates. 2 U.S.C. § 434(g)(1)(B). Any independent expenditure aggregating
2 \$10,000 or more with respect to any given election, at any time during a calendar year, up to and
3 including the 20th day before an election, must disclose this activity within 48 hours each time
4 that the expenditures aggregate \$10,000 or more. 2 U.S.C. § 434(g)(2).

5 Based on its review of the three reports discussed below, RAD identified 109 24-or 48-
6 Hour notices of 288 independent expenditures totaling \$226,401.86 that were not filed or not
7 timely filed. Indeed, as shown below, the Committee failed to file Notices for 274 of the 288
8 independent expenditures at issue.

9 **Table One: Untimely Filed or Non-Filed 24 and 48-Hour Notices**

24-Hour	2006 October Quarterly Report	14	5	\$26,372.13
48-Hour	2006 12 Day Pre-General Report	36 (none filed)	12	\$49,535.15
24-Hour	2006 Post General Report	238 (none filed)	92	\$150,494.58
	Totals	288	109	\$226,401.86

10
11 **1. 24-Hour Notices Stemming from the 2006 October Quarterly Report**

12 On January 31, 2007, RAD sent the Committee a Request for Additional Information
13 ("RFAI") noting that it either failed to file or untimely filed 24-Hour Notices for 14 independent
14 expenditures totaling \$26,372.13 that were disclosed on its 2006 October Quarterly Report,
15 which covered the period from July 1, 2006 through September 30, 2006 and was initially filed
16 on October 15, 2006. RAD Referral at 3. See Table One. Of these expenditures, the Committee
17 failed to file three 24-Hour Notices to support eight independent expenditures totaling
18 \$11,557.10, and untimely filed two Notices to support six independent expenditures totaling

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1 \$14,815.03 filed after the 2006 Congressional primary elections in Michigan and Nevada. *Id.*
2 The Committee disclosed six independent expenditures totaling \$14,815 on Schedule E of the
3 2006 October Quarterly Report, with reported dates of July 20, 2006 and July 26, 2006,
4 respectively. The Committee, however, did not file Notices for these independent expenditures
5 until September 7, 2006 and September 14, 2006, respectively.

6 On March 22, 2007, the Committee responded to the RFAI with a Form 99, which stated
7 in part:

8 While we are aware of the requirements for filing 24-hour notices
9 and make every endeavor to comply with the law, periodically the
10 information is not provided to our accounting staff in the appropriate
11 timeframe to ensure these reports are filed timely. We have instituted
12 practices to help us report these expenditures in a timely fashion and
13 will continue to encourage stricter controls on these expenditures.
14 For those we have missed, we will file notices in the next few days.
15 Though they will not be timely, it will show as a good-faith effort to
16 comply with the law, which is our goal.

17
18 RAD Referral at 4. On March 23, 2007, the Committee filed two 24-Hour Notices disclosing
19 eight independent expenditures totaling \$11,557.10 for the 2006 Congressional primary elections
20 that had not been filed during the 2006 election cycle.² In sum, the Committee failed to timely
21 file five 24-Hour Notices for 14 independent expenditures totaling \$26,372.13.

22 2. 48-Hour Notices Stemming from the 2006 12 Day Pre-General Report

23 On October 17, 2007, RAD sent the Committee a RFAI referencing the 2006 12 Day Pre-
24 General Report, stating, among other things, that the Committee may have failed to file 48-Hour
25 Notices for thirty-three independent expenditures totaling \$44,326.67. *Id.* at 5. The
26 Committee's amendments to this Report, filed on December 18, 2007, and May 2, 2008,

² For example, while numerous independent expenditures were disclosed as made on August 4, 2006 on Schedule E of the Committee's 2006 October Quarterly Report, the Committee did not file Notices for these expenditures until March 23, 2007, several months later.

1 however, did not address these 48-Hour Notices, nor did the Committee otherwise respond to the
2 October 17, 2007, RFAI concerning this issue. *Id.* at 6,7.

3 On July 2, 2008, RAD sent the Committee a RFAI, referencing the Committee's
4 May 2, 2008 amendment, and identified an additional three independent expenditures totaling
5 \$5,208.48 for which 48-Hour Notices had not been filed. As described in Table One above,
6 adding these independent expenditures with the other 33 independent expenditures noted in the
7 October 17, 2007 RFAI, results in 36 independent expenditures totaling \$49,535.15 for which
8 48-Hour Notices were not filed.

9 **3. 24-Hour Notices Stemming from the 2006 Post-General Report**

10 The Committee disclosed two hundred thirty-eight independent expenditures totaling
11 \$150,494.58 on Schedule E of its 2006 30 Day Post-General Report, covering the period from
12 October 19, 2006 through November 27, 2006, but it failed to file 24-Hour Notices for them.
13 See Table One. On October 17, 2007 and July 2, 2008, RAD sent the Committee RFAs with
14 respect to its failure to file notices of these expenditures. The Committee did not address the
15 missing notices with respect to this Report in any subsequent amendments, Form 99s or other
16 written correspondence.

17 In response to the notice of referral, Respondents, alluding to the reason given for
18 untimely filing of independent expenditures in the 2004 election cycle that are the subject of
19 MUR 6133, stated that "the Treasurer still did not understand that an 'expenditure' occurred at
20 dissemination of a communication," which resulted in untimely independent expenditure reports.
21 Response at 3. This position is inconsistent with the Committee's Form 99 and other available
22 information, in which the Committee acknowledges that for the 2006 election cycle, it "was
23 aware of the requirements" but failed to comply because its staff did not timely inform the

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Committee's national office of the independent expenditures. Moreover, most Notices were never filed, while others would have been untimely even if the Committee had filed Notices based on the date that it paid for the expenditure. Therefore, the explanation that the untimely filings were solely attributable to a misunderstanding of the trigger date for filing, is not supported by the facts.

C. Failure to Provide Accurate Supporting Schedules

1. Overview

In addition to the Committee's failure to file, or timely file, 24-and 48-Hour Notices, RAD identified 175 instances in which the Committee failed to provide accurate information on Schedules D and E of its 2006 12 Day Pre-General, 30 Day Post-General, and Year-End disclosure Reports. *See* 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.3(d) and 104.11. *See also* 2 U.S.C. § 434(b)(4)(H)(iii) and 11 C.F.R. § 104.4. In their response to the notice of referral, Respondents generally acknowledged these errors, and pledged to file amended reports to "cure many of these apparent violations."³ *See* Response at 2.

Table Two below summarizes the Committee's inaccurate reporting that has not yet been corrected in amendments, as discussed in more detail in Sections C.2.b (12 Day Pre-General), C.3.a (30 Day Post-General) and C.4 (Year-End Report), *infra*:

³ In late September 2009, Respondents made representations that they will file the amendments in the near future. Subsequently, on November 10, 2009, Respondents stated that complications had prevented them from filing the necessary amendments, but hoped to do so before November 19, 2009.

Table Two: Independent Expenditure Reporting Errors

Failure to disclose the candidate name, office sought, state and district	Amended 2006 12 Day Pre-General (5) (\$7,800.30)	\$9,618.67
	Amended 2006 30 Day Post-General Report (8) (\$1,818.37)	
Failure to provide the correct congressional district	Amended 2006 12 Day Pre-General (13) (\$4,306.40)	\$15,938.63
	Amended 2006 30 Day Post-General Report (25) (\$11,483.65)	
	Amended 2006 Year End Report (1) (\$148.58)	
Failure to provide a purpose of disbursement or an adequate purpose of disbursement	Amended 2006 12 Day Pre-General (1) (\$249.60)	\$1,127.48
	Amended 2006 30 Day Post-General Report (76) (\$877.88)	
Failure to clarify independent expenditures on Schedule E that were made after the date of the election	Amended 2006 30 Day Post-General Report (13) (\$826.26)	\$5,298.56
	Amended 2006 Year End Report (7) (\$4,472.30)	
Failure to clarify discrepancies in the date of dissemination disclosed on 24-Hour Notices and Schedule Es	Amended 2006 30 Day Post-General Report (2)	\$1,392.82
Failure to clarify discrepancies in the amounts of 6 independent expenditures disclosed on 24-Hour Notices totaling \$2,785.65 and on Schedule E totaling \$1,822.88	Amended 2006 30 Day Post-General Report (6)	\$962.77 (difference between the amount on the notices (\$2,785.65) and Schedule E (\$1,822.88))
Total		\$34,338.93

2. 2006 12 Day Pre-General Report Inaccuracies

a. Failure to disclose Independent Expenditures on Schedule E

On October 10, 12, and 18, 2006, the Committee filed four 48-Hour Notices with respect to six independent expenditures totaling \$67,951.49, but did not disclose them on Schedule E of its 12 Day Pre-General Report, covering the period from October 1, 2006 through October 18, 2006, filed on October 26, 2006, or in the amended Report filed on May 2, 2008. On July 2,

1 2008, RAD sent the Committee a RFAI noting that the independent expenditures at issue were
2 not reflected on Schedule E of the May 2, 2008 amended Report, and requested further
3 clarification. The Committee's August 4, 2008 Amended 12 Day Pre-General Report did not
4 provide the requested clarification. On September 17, 2008, the Committee submitted a Form 99
5 attempting to link the expenditures from the notices with expenditures on Schedule E of the
6 relevant Report. *Id.* However, the referenced expenditures on Schedule E disclosed different
7 dissemination dates, and were already clearly linked to other 48-Hour Notices that were filed.
8 *Id.* To date, the Committee has not clarified the discrepancies.

9 **b. Incomplete Independent Expenditure Reporting**

10 Each independent expenditure disclosure on Schedule E must include, among other
11 things, the name and address of each person who receives a disbursement from the individual in
12 connection with the independent expenditure, along with the date, amount, and purpose of any
13 such independent expenditure, and a statement that indicates whether such expenditure is in
14 support of, or in opposition to, a candidate, as well as the name and office sought by the
15 candidate. See 2 U.S.C. §§ 434(b)(6)(B)(iii) and 434(c)(2)(A). With respect to some
16 independent expenditures disclosed on Schedule E of its first 2006 Amended 12 Day Pre-
17 General Report, the Committee failed to include required information. The Committee disclosed
18 incorrect congressional districts when identifying the offices sought by candidates for thirteen
19 independent expenditures totaling \$4,306.40 made on behalf of ten federal candidates, and
20 omitted the candidate's name eight times in independent expenditures totaling \$8,602.58. The
21 Committee also failed to describe the purpose of its October 12, 2006, independent expenditure
22 made on behalf of Dennis Rehberg in the amount of \$249.60. RAD Referral at Attachment 12.
23 After receiving RAD's October 17, 2007, and July 2, 2008, RFAs with respect to these

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omissions, the Committee filed another Amended 2006 12 Day Pre-General Report on August 4, 2008. While this amendment decreased the number of independent expenditures missing a candidate's name from eight to five totaling \$7,800.30, it did not address the remaining three omitted names, the incorrect candidate districts or the missing purpose for the aforementioned independent expenditure. RAD Referral at 8.

3. 2006 30 Day Post-General Report Inaccuracies

a. Incomplete Independent Expenditure Reporting

On December 8, 2006, the Committee filed its initial 2006 30 Day Post-General Report, covering the period from October 19, 2006 through November 27, 2006. On October 17, 2007, RAD sent the Committee an RFAI, informing it of discrepancies and omissions with respect to its independent expenditure reporting on this Report. Generally, RAD asked the Committee to amend its Report to: disclose the name, office sought, state and district of a federal candidate; provide the correct congressional district information for several candidates; and clarify its description of certain independent expenditures.

The Committee's March 11, 2008, amendment to this Report corrected some of the inaccuracies, as it reduced the number of independent expenditures with inadequate purposes of disbursement from 310 totaling \$94,823.81 to 83 totaling \$16,520.66. Further, the amended Report reduced the amount of independent expenditures made after the 2006 General Election that did not appear to be debt payments to \$8,589.86, from \$72,906. *Id.* at 12. However, the number of entries missing the candidate's name remained at eight, and the amendment increased the total amount of the associated independent expenditures to \$1,818.37, from \$765.41. Additionally, in the amendment, the number of independent expenditures with incorrect congressional districts increased to 25 from 22, totaling \$11,483.65, from \$8,768. *Id.* at 12.

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1 On July 2, 2008, RAD sent the Committee another RFAI, asking, among other things, for
2 clarification regarding the independent expenditures on Schedule E with dates or amounts that
3 did not correspond to the dates and amounts on its 24-Hour Notices. The Committee's most
4 recent Amended 2006 30 Day Post-General Report, filed August 4, 2008, decreased the number
5 of independent expenditures with inadequate purposes to 76 totaling \$877.88, and decreased the
6 number of independent expenditures made after the date of the 2006 General Election to 13
7 totaling \$826.26. The Committee did not correct other independent expenditures with
8 inadequate purposes, missing candidates' names, and incorrect congressional districts, and did
9 not correct or clarify the discrepancies in dates and amounts between the independent
10 expenditures reported on 24-Hour Notices and on Schedule E.

11 In sum, the Committee failed to disclose the name of the candidate supported or opposed
12 as well as the candidate's office sought, state and district, where applicable, for eight
13 independent expenditures totaling \$1,818.37; disclosed incorrect congressional districts when
14 identifying the office sought for 25 independent expenditures to congressional candidates
15 totaling \$11,483.65; failed to provide an adequate purpose of disbursement for 76 independent
16 expenditures totaling \$877.88; failed to clarify 13 independent expenditures totaling \$826.26 that
17 were made after the date of the 2006 General Election and which did not appear to be debt
18 payments for previously reported expenditures; and disclosed two independent expenditures
19 totaling \$1,392.82 with dissemination dates that were different than the dissemination dates
20 disclosed on the 24-Hour Notices.⁴ RAD Referral at 10, Attachments 10-14. The Committee
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⁴ RAD stated in its October 17, 2007 RFAI that the Committee must amend Schedule E to include a brief statement describing why expenditures were made, as its descriptions of "Fed Ex" and "GOTV Calls" for certain independent expenditures were inadequate. See 11 C.F.R. § 104.3 (b)(3)(i)(B) (get-out-the-vote would not meet the requirements for reporting the purpose of an expenditure).

1 also failed to clarify six independent expenditures with amounts on Schedule E that differed from
2 the amounts on the corresponding 24-Hour Notices by a total of \$962.77. *Id.*, Attachment 15.

3 **b. Debt Reporting**

4 RAD's RFAs to the Committee on October 17, 2007, February 8, 2008, April 2, 2008,
5 and July 2, 2008 also requested that the Committee clarify discrepancies in its reporting of debts
6 on its 2006 30 Day Post-General Report. The Committee's March 11, 2008, May 2, 2008, and
7 August 4, 2008 amendments to the Report, however, did not clarify inaccuracies relating to debts
8 disclosed on Schedule D supporting Line 10 of the Summary Page, debt payments on a
9 disbursement schedule that did not correspond to Schedule D payment entries, and other debt
10 entries on Schedule D that did not correspond to Schedule E entries. As a result, the RAD
11 Referral references eight instances, collectively totaling \$10,408.84, that reflect inaccurate debt
12 reporting. Specifically, the Committee failed to provide memo entries on Schedule Es disclosing
13 the date of dissemination of three independent expenditures totaling \$3,414.16, for which debts
14 were disclosed on Schedule D supporting Line 10 (Debts and Obligations Owed by the
15 Committee) of the Summary Page of the Amended 2006 30 Day Post-General Report. RAD
16 Referral at 15, Attachment 7. The Committee also failed to disclose two debt payments totaling
17 \$1,861.02 on Schedule B to correspond to the Schedule D debt payment entries. *Id.* In addition,
18 the Committee failed to disclose debt entries on Schedule D corresponding to three memo entries
19 on Schedule E for independent expenditures totaling \$5,133.66. RAD Referral at 15,
20 Attachment 8.

21 Further, on Schedule D of its most recent Amended 2006 30 Day Post-General Report
22 filed August 4, 2008, the Committee disclosed two debts owed to EU Services, with opening
23 balances totaling \$50,245.84. However, the Committee did not reflect these debts as outstanding

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1 ending balances on Schedule D of the prior Amended 2006 12 Day Pre-General Report, also
2 filed on August 4, 2008. RAD Referral at 15, Attachment 9. Conversely, the Committee
3 disclosed two other debts on Schedule D owed to this vendor totaling \$40,141.15 as outstanding
4 ending balances on the Amended 2006 12 Day Pre-General Report, without disclosing the
5 opening balances for these debts on Schedule D to the Amended 2006 30 Day Post-General
6 Report.⁵ *Id.*

7 **4. 2006 Year-End Report Inaccuracies**

8 On January 31, 2007, the Committee filed its initial 2006 Year-End Report, covering the
9 period from November 28, 2006 through December 31, 2006. In this Report and its
10 May 2, 2008 and August 4, 2008, amendments, the Committee disclosed an incorrect
11 congressional district for one independent expenditure made to a congressional candidate in the
12 amount of \$148.58. *Id.* at 16. Additionally, the Committee failed to clarify seven independent
13 expenditures totaling \$4,472.30 on Schedule E of this Report and amendments, which were
14 reportedly made after the date of the 2006 General Election and did not appear to be debt
15 payments for expenditures previously disclosed. As early as its RFAI on October 17, 2007,
16 RAD referenced these discrepancies, which the Committee did not clarify on its most recent
17 August 4, 2008 amendment to the 2006 Year-End Report, or in any further communication to
18 RAD. *See* footnote 5, *supra*.

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⁵ RAD did not send a RFAI after the Committee filed its last Amended 2006 30 Day Post-General Report dated August 4, 2008, and had advised the Committee in its July 2008 RFAI that it would not receive an additional notice from the Commission on this matter. Subsequently, RAD advised the Committee by telephone on September 12, 2008, that a referral to Enforcement was being written regarding issues relating to its 2006 disclosure reports. RAD, however, allowed the Committee the opportunity to provide additional information by September 17, 2008, but it did not do so. RAD Referral at 5. Respondents' September 16, 2009 response to the notice of referral subsequently acknowledged these errors and stated that it would amend the appropriate reports. *See also* footnote 3, *supra*.

C. Conclusion

Based on the above, the Commission has determined to find reason to believe National Right to Life Political Action Committee and Carol Tobias, in her official capacity as treasurer, violated 2 U.S.C. §§ 434(b) and 434(g).

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